No. 12759

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

M. P. BARBACHANO, *et al.*,

Appellants,

vs.

LAWRENCE W. ALLEN, *et al.*,

Appellees.

Opening Brief of Appellants M. P. Barbachano and the Border Electric and Telephone Co., Inc., a Corporation. (C. C. A. Rule 20(1).)

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I.

Jurisdiction.

This action was brought by citizens of the Republic of Mexico against citizens of the State of California, and was for various relief including damages for fraud and other intentional injury. [Amended Complaint, pars. II and III, Transcript of Record* 4.]

The amount in controversy exceeded and exceeds $3,000.00. [Amended Complaint par. XXIII, Tr. 14.]

Jurisdiction of the District Court was founded on diversity of citizenship. (28 U. S. C. A., Sec. 1332.)

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*Transcript of Record hereinafter abbreviated as Tr.

Judgment in the District Court, entered October 18. 1941, was in favor of plaintiff-appellants for damages for fraud and other intentional injury inflicted by the defendants, in the sum of $86,210.42, together with plaintiff-appellants' costs amounting to $343.99. [Tr. 108.]

The present appeal arises out of an Order of the District Court entered October 13, 1950, granting plaintiff-appellants' motion for enforcement of judgment notwithstanding the lapse of five years from date of entry, but excepting the defendant-appellee Willis Allen from execution, on the basis of his discharge in voluntary bankruptcy. [Tr. 142, 143.]

The appeal is only from that part of the Order denying enforcement as to Willis Allen. [Tr. 144.]

Jurisdiction of the Circuit Court of Appeals is based on the provision for review of final decisions of the District Courts, as contained in 28 U. S. C. A., Section 1291. (Judicial Code, Section 128, as amended.)

Appeal was taken from the relevant parts of the Order of the District Court as provided in Rule 73(b) of the Federal Rules of Civil Procedure.

II.
Statement of the Case.

A. Summary.

Plaintiffs' judgment is composed of damages flowing from the fraud of defendants and their conspiracy to prevent plaintiffs' enjoyment of their property, by means of wrongful attachment and defamation of plaintiffs' title thereto.

The District Court found that plaintiffs have shown due diligence in enforcement of their judgment and accordingly ordered that execution issue thereon notwithstanding the lapse of more than five years from date of entry. [Tr. 143.]

However, the defendant Willis Allen claimed that as to him, execution is barred by his voluntary discharge in bankruptcy after entry of judgment herein.

He sought successfully below to avoid the effect of his fraud on the ground that neither he nor the other defendants obtained plaintiffs' property thereby. [Tr. 130.]

Plaintiffs submit that the liability of Willis Allen for fraud was not discharged. The fact that the bankrupt did not himself receive the property induced by his fraud is not a defense under Section 17a of the Bankruptcy Act (11 U. S. C. A., Sec. 35) where as here he obtained property from plaintiffs for the benefit of an enterprise in which the parties were mutually interested, and but for the fraud of defendants, would have continued to be mutually interested.

PLAINTIFFS ALSO SUBMIT THAT, INSOFAR AS THE JUDGMENT IS COMPOSED OF ADDITIONAL DAMAGES FOR INJURIES TO PLAINTIFFS' PROPERTY FLOWING FROM DEFENDANTS' CONSPIRACY TO PREVENT PLAINTIFFS' COMMERCIAL OPERATIONS BY WRONGFUL ATTACHMENT OF THEIR EQUIPMENT AND SLANDER OF THEIR TITLE, THE LIABILITY OF DEFENDANTS IS CLEARLY NON-DISCHARGEABLE UNDER THE SECOND HALF OF THE SECOND CLAUSE OF SECTION 17A OF THE BANKRUPTCY ACT RELATING TO WILFUL AND MALICIOUS INJURY TO THE PROPERTY OF ANOTHER.

B. THE FACTS.

The findings and conclusions of the District Court upon which the Judgment was founded, are that plaintiffs M. P. BARBACHANO and THE BORDER ELECTRIC & TELEPHONE CO., INC., of Mexico entered into a written agreement under date of March 30, 1936, with defendants LAWRENCE W. ALLEN, WILLIS ALLEN and M. F. DEXTER, doing business under the fictitious firm name of CINEMA ADVERTISING AGENCY. [Memorandum of Conclusions of JUDGE HOLLZER,* filed September 17, 1941, at Tr. 58; Findings of Fact and Conclusions of Law of JUDGE HOLZER,** filed October 18, 1941, at Tr. 78.]

This Agreement is annexed to the Amended Complaint as Exhibit A. [Tr. 22-25.]

It provides that the mentioned plaintiffs would obtain a permit from the Mexican Government for the operation of a radio broadcasting station at Rosarito Beach, Baja,

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*Hereinafter abbreviated as "Conclusions," with reference to page numbers in the Transcript.

**Hereinafter abbreviated as "Findings," with reference to page numbers in the Transcript.

California, Mexico, by a Mexican corporation [par. 5 at Tr. 23] of which 80% of the capital stock would be controlled by the mentioned defendants and 20% by these plaintiffs. [Par. 9 at Tr. 24-25.]

Plaintiffs would "furnish us" (*i. e.* the corporation controlled by defendants) "without cost," with the lands and buildings necessary to house the studios, transmitter and antenna [par. 5 at Tr. 23], whereupon these defendants would construct the radio station at their "own expense." [Par. 1 at Tr. 22.]

THE AGREEMENT AND THE SUBSEQUENT RELIANCE OF PLAINTIFFS THEREON WERE INDUCED BY THE MATERIAL AND KNOWINGLY FALSE REPRESENTATIONS OF THESE DEFENDANTS REGARDING THEIR FINANCIAL RESOURCES, ABILITY TO PERFORM IT AND ACTUAL FERFORMANCE. [Conclusions, Tr. 58-62; Tr. 63-67, and Tr. 74; Findings, par. V, at Tr. 78-79; pars. XXXIV-XXXVI, at Tr. 42-93.]

Plaintiffs eventually discovered the fraud of defendants, and therefore terminated the agreement on or about October 5, 1936. [Conclusions, Tr. 60, 74.]

Meanwhile, however, plaintiffs had acted in reliance upon these false representations of the defendants, by investing on behalf of the enterprise contemplated by the agreement, sums totaling in excess of $30,000, to wit, 11,000 pesos or the then equivalent of about $3000 to procure the radio station permit [Conclusions, at Tr. 67-68], plus $27,000 to furnish the land, buildings and power facilities required of plaintiffs [Conclusions, Tr. 63; Findings, par. VII, at Tr. 79, verifying par. X of the Amended Complaint, at

Tr. 7], plus additional cost to remove from their land a smaller radio station then located there. [Conclusions, Tr. 62; Findings, par. VIII, at Tr. 79-80.]

Having been induced by defendants' fraud to incur the aforesaid investment and commit themselves to the Mexican Government in procuring the permit, plaintiffs upon discovery of defendants' fraud and inability to construct the radio station were compelled to proceed with construction in accordance with the permit [Conclusions, Tr. 71; Findings, par. XIII, at Tr. 82, verifying the allegations of Paragraph XIX of the Amended Complaint, at Tr. 11], at a total cost of $90,000 to the plaintiffs M. P. Barbachano and Border Electric & Telephone Co., Inc. [Conclusions, Tr. 71-72; Findings, par. XIII at Tr. 82.]

However, whereas these defendants had falsely represented that the construction would cost $90,000, it actually cost $144,697.88 which was the true reasonable cost thereof, with the result that plaintiffs, in order to obtain the funds to complete construction, had to turn over to third parties the 80% interest in the Mexican corporation, which defendants would have obtained but for their fraud. [Conclusions, Tr. 71-72.]

Accordingly, whereas under the agreement with defendants, plaintiffs M. P. Barbachano and Border Electric & Telephone Co., Inc. were entitled to 20% of the stock in plaintiff radio-broadcasting corporation for 20% of the total investment of $144,697.88, or $28,939.58, the same 20% of stock cost plaintiffs over $90,000, or a net

investment loss in excess of $61,060.42, flowing directly from the fraud of defendants. [Conclusions, at Tr. 75-76: Findings, in par. XVII, at Tr. 86.]

THIS $61,060.42 OF LOSS TO PLAINTIFFS REPRESENTS PART OF THE TOTAL OF MONEY OBTAINED FROM THE PLAINTIFFS BY THE FRAUD OF DEFENDANTS, FOR THE BENEFIT OF AN ENTERPRISE IN WHICH, BUT FOR THE TERMINATION OF THE AGREEMENT FOR THEIR FRAUD, THESE DEFENDANTS WOULD HAVE CONTINUED TO EXERCISE 80% INTEREST AND CONTROL.

Not content with having induced plaintiffs M. P. BARBACHANO and BORDER TELEPHONE & ELECTRIC Co. to part with over $90,000, of which over $61,060.42 was lost by plaintiffs as a direct result of the fraud of defendants, these defendants entered into a conspiracy to inflict, and succeeded in inflicting additional damage on plaintiffs by wrongfully causing plaintiffs' equipment to be attached so as to interfere with completion of the radio station [Conclusions, Tr. 69-70; Findings, par. XV at Tr. 83-85], plus slandering plaintiffs' title to the radio station among advertisers, governmental authorities in the United States and Mexico, banks, chambers of commerce, and so forth, in such a way as to prevent it from commencing normal commercial operations. [Conclusions, Tr. 73-74; Findings, par. XV at Tr. 83, vertifying par. XXI, at Tr. 12-13 of the Amended Complaint.] The aforementioned attachment eventually was found by the District Court to have been void from the beginning. [Tr. 85.]

In consequence of all of the foregoing facts, the District Court gave judgment for plaintiffs and against the defendants Lawrence W. Allen, Willis Allen, M. F. Dexter and Cinema Advertising Agency, in the sum of $86,210.42, to wit:

(1) Loss of over $61,060.42 resulting directly from the fraud of defendants representing investment by plaintiffs on behalf of the enterprise of plaintiffs and defendants contemplated by the agreement. [Conclusions, Tr. 75-76.]

(2) Damage in the sum of $10,000 to plaintiffs from defendants' conspiracy and the wrongful attachment flowing therefrom. [Conclusions, Tr. 76; Findings, Tr. 85-86.]

(3) Damage in the sum of $15,150 to plaintiffs from loss of broadcast advertising [Conclusions, Tr. 74-75; Findings, Tr. 86-87], which apparently includes damages from prevention of commercial operations by slander of plaintiffs' title to the radio station, which the court found to have occurred as alleged in paragraph XXI of the amended complaint. [Conclusions, Tr. 73-74; Findings, Tr. 82-83];

Plus plaintiffs' costs in the sum of $343.99.

III.
Specification of Errors.

Appellants specify the following errors in the aforesaid Order of the District Court entered October 13, 1950:

(1) The District Court erred in finding that the defendant Willis Allen had been released from the liability of the judgment herein by his discharge in bankruptcy;

(2) The District Court erred in failing to find that the aforesaid judgment for damages in favor of the appellants herein and against the defendants, including appellee Willis Allen, comes within Section 17a of the Bankruptcy Act (Act of July 1, 1898, c. 541, 30 Stat. 550, 11 U. S. C. A. 35, as amended) which provides that "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as . . . are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another," and that accordingly the defendant-appellee Willis Allen was not released from the liability of said judgment by his discharge in bankruptcy;

(3) The District Court erred in ordering that the defendant Willis Allen be excepted from the writ of execution ordered to issue against all defendants named in said judgment, and in denying execution upon the judgment as to the defendant Willis Allen.

IV.

Summary of Argument.

1. The decision of the District Court amounts to a rule of law that bankruptcy is a bar to enforcement of a judgment for damages for fraud unless the money or property obtained by fraud from the plaintiff *was received by the bankrupt.*

It is submitted that Section 17a of the Bankruptcy Act does not depend upon receipt of the money or property by the fraudulent bankrupt.

IT IS SUFFICIENT WHERE AS HERE, THE MONEY AND PROPERTY INDUCED FROM PLAINTIFFS WAS INVESTED IN A COMMON ENTERPRISE CONTROLLED BY DEFENDANT AND INTENDED FOR THE MUTUAL BENEFIT OF PLAINTIFF AND DEFENDANTS.

Accordingly, appellants submit that the judgment in favor of plaintiff-appellants comes within the second clause of Section 17a of the Bankruptcy Act with reference to liability for obtaining property by false pretenses or false representations, and that accordingly the bankruptcy of Willis Allen did not avoid his liability for this judgment.

2. Independently of the undischarged liability of Willis Allen for obtaining property by false pretenses or false representations, his liability is likewise excepted from the discharge as being one for "willful and malicious injuries to the . . . property of another . . .," within the meaning of the further language of the same clause of the Bankruptcy Act.

V.
ARGUMENT.

(1) Fraud.

(a) As noted under Statement of the Case above, plaintiffs were obligated by their agreement with defendants to furnish various property on behalf of a common enterprise controlled by defendants, to be incorporated eventually, with defendants owning 80% and plaintiffs 20% of the stock.

The Court found that plaintiffs expended in excess of $90,000.00 on behalf of the enterprise, of which $61,-060.42 was lost by plaintiffs, to their damage, in direct consequence of defendants' fraud.

Of the $90,000.00, the Court found that over $30,000.00 was expended by plaintiffs before discovery of defendants' fraud and the consequent termination of defendants' interest in the agreement.

The Court also found that plaintiffs were compelled to expend the balance of the $90,000.00, and thereafter of $144,697.88 with the aid of funds from third parties, because of the inability of defendants to perform, and the commitments undertaken by plaintiffs in direct consequence of defendants' fraud.

Up to the time when defendants' interest in the enterprise was terminated by reason of their fraud, there is no doubt that,—had defendants performed, and plaintiffs nevertheless refused to form the Mexican corporation and transfer the assets of the enterprise to it, as contemplated by the agreement—defendants would have been entitled as against plaintiffs, to all of the remedies either of partners or joint adventurers, including specific per-

formance to compel creation of the corporation and transfer. *Cf. Gossett v. Schabelitz,* 74 Cal. App. 2d 854, 169 P. 2d 684 (1946), where parties to a common enterprise which contemplated transfer to a corporation, were held liable to each other as joint adventurers upon failure of creation of the corporation contemplated by the agreement.

See also:

Butler v. Union Trust, 178 Cal. 195, 172 Pac. 601 (1918);

Hamer v. MacClatchie, 220 Cal. 720, 32 P. 2d 620 (1934);

Oakley v. Rosen, 76 Cal. App. 2d 310, 173 P. 2d 55 (2nd Dist. 1946);

14 Cal. Jur. 760, Sec. 2.

Far from denying their interest in the common enterprise, defendants including Willis Allen insisted upon it throughout and claimed also that plaintiffs received and held the assets of the enterprise as agents for and trustees of these defendants, and that defendants were entitled to 80% of the stock of plaintiff radio-broadcasting corporation and to an accounting of profits. [See Amended Answer of defendants Lawrence W. Allen, Willis Allen, Cinema Advertising Agency and M. F. Dexter and Counterclaim, filed June 25, 1940, at Tr. 43-48.]

Having done so, and caused plaintiffs to invest in this common enterprise to their damage, defendants cannot be heard now to take advantage of the fact that they were later held by the Court to be estopped by their fraud from claiming an interest in the enterprise. California

Civil Code, Section 3517 ("No one can take advantage of his own wrong.")

ACCORDINGLY, PLAINTIFFS' INVESTMENT ON BEHALF OF THE ENTERPRISE, AT LEAST UNTIL DEFENDANTS CAUSED PLAINTIFF TO TERMINATE THE INTEREST OF DEFENDANTS BECAUSE OF THEIR FRAUD, AND THEREAFTER INSOFAR AS FURTHER INVESTMENT IN THE ENTERPRISE WAS COMPELLED BY COMMITMENTS FLOWING FROM DEFENDANTS' FRAUD, MUST BE HELD TO HAVE BEEN FOR THE BENEFIT OF DEFENDANTS INCLUDING WILLIS ALLEN AS COMMONLY INTERESTED WITH PLAINTIFFS THEREIN.

(b) Section 17a of the Bankruptcy Act (11 U. S. C. A., Sec. 35) does not require that the property obtained by defendant's fraud be obtained *for him,* in order to avoid the bar of bankruptcy.

It is enough that property was obtained, "whether for himself or for anybody else," especially where as here he was beneficially interested.

Thus, in *Re Kunkle,* 40 F. 2d 563 (E. D. Mich. 1930), the bankrupt sought to stay enforcement of a judgment against him because

> "the bankrupt did not receive any conveyance of the property alleged to have been fraudulently obtained, but was acting as agent for the other defendants in the state case. Not being in a fiduciary relationship to the petitioners herein, the only question involved in this proceeding now before the court is whether the decree against Kunkle is, in the language of section 17-a of the Bankruptcy Act (11 USCA, sec. 35) a liability for obtaining property by false pretenses or false representation."

In rejecting the bankrupt's motion to stay, the Federal District Court observed:

> "The bankrupt contends that section 17-a applies only to a case where the bankrupt himself obtained property for himself by such false pretenses or false representation, and that the intent and purpose of the act was not to permit him to retain such property as against the person defrauded, and at the same time secure through bankruptcy a discharge of the debt or liability arising out of the fraud. This seems to be begging the question. *To adopt the interpretation suggested by the bankrupt would be to rewrite the section so as to read: 'A discharge in bankruptcy shall release a bankrupt from all his provable debts, except such as . . . are liabilities for obtaining property (for himself) by false pretenses or false representations.'*" (Italics mine.)

> "If that had been the intention of the Congress, the Act would have been so worded. There is no exception contained in or suggested by the act as to liabilities for obtaining property by false pretenses or false representation. It plainly applies to all such obtaining of property by the bankrupt, *whether for himself or for anybody else.* The rule of statutory construction is that, where the language of the statute is plain, it is not susceptible of interpretation, and the letter of the law will prevail." (Italics mine.)

In *Matter of Dunfee,* 219 N. Y. 188, 144 N. E. 52 (1916), plaintiff bonding company paid $23,561.33 to a third party on the basis of a surety bond issued at defendant's request. Thereupon plaintiff obtained judgment against defendant for $27,669.53, being the full penalty

of the bond plus interest and costs. The basis of judgment was that the defendant induced plaintiff to issue the bond by false representations as to defendant's worth.

Notwithstanding that the judgment was for damages for fraud, defendant claimed that his subsequent bankruptcy avoided it because he obtained no "property from plaintiff." He also contended that any property paid by plaintiff to the third party was a separate transaction from the one in which plaintiff was induced to issue a bond by defendant's fraud.

In rejecting defendant's contention, the court, which included later United States Supreme Court Justice Cardozo, stated:

> "Obtaining the bond by false representations and paying the obligee the amount of the loss, should all be regarded as one transaction, which amounted to obtaining money by false representations within the Bankrupt Law. The Bankrupt Law does not require that the property shall be obtained by the bankrupt at the instant of making the false representations *nor that it shall pass directly to the bankrupt* . . ." (Italics mine.)

In substantially similar circumstances, the Texas Court of Civil Appeals came to the same conclusion:

> "We think the statute referred to" (*i. e.,* section 17 of the Bankruptcy Act) "should be liberally construed so as to prevent the discharge in bankruptcy from relieving against a liability which would not exist but for the fraudulent conduct of the bankrupt."
>
> *Gaddy v. Witt,* 142 S. W. 926 (1911) (reh. den.).

In *Hyland v. Fink,* 178 N. Y. Supp. 114 (App. Div. 1919), aff'd 184 N. Y. Supp. 928, App. Div. 1920), defendant similarly sought to use his discharge in bankruptcy in bar of a judgment against him for damages for fraud. He argued that the loan which defendant induced from plaintiff, was made by plaintiff to a third party, and that therefore defendant obtained no property from plaintiff.

In rejecting defendant's argument, the Court noted that the record showed that the loan was to enable the third party to pay interest on a mortgage on his real property, and that defendant was commonly interested with the third party in real estate transactions. The Court concluded:

> "If it is shown that the bankrupt derives a benefit from the property obtained he comes within the provisions of the statute in question, *which by its very terms places no limitation as to whom the property is obtained for.*" (Italics mine.)

IT IS SUBMITTED THAT THE RULE THUS STATED BY THE COURTS IN CONSTRUING SECTION 17a OF THE BANKRUPTCY ACT,—BESIDES FOLLOWING THE LITERAL MEANING OF THE ACT—IS IN ACCORDANCE WITH SOUND REASON. FOR THE INJURY TO PLAINTIFF IS THE SAME, AND THE WRONG DONE BY DEFENDANT IS EQUALLY DESERVING OF SANCTIONS, WHETHER THE PROPERTY OBTAINED FROM PLAINTIFF BY DEFENDANTS' FRAUD WENT TO DEFENDANT, OR TO A THIRD PARTY OR TO AN ENTERPRISE IN WHICH HE AND PLAINTIFF WERE COMMONLY INTERESTED.

It should be noted that the courts have reached the same conclusion in construing similar language in subdivision b(3) of Section 32 of 11 U. S. C. A. (36 stat. 839), defining causes for denying discharge in bankruptcy.

This clause as contained in the Bankruptcy Act of 1898, as amended in 1903 (32 stat. 797), provided for denial of discharge in bankruptcy if the bankrupt has "obtained property on credit from any person upon a materially false statement in writing made to such person for the purpose of obtaining such property on credit."

In re Aldridge, 168 Fed. 93 (N. D., N. Y. 1909), the bankrupt was denied discharge in bankruptcy where he had induced the objecting creditors to sell to a third party upon the false representations of the bankrupt as to his own financial condition.

In affirming denial of discharge the Court stated:

> "Again, must the statement be used by the one in whose favor it is written *to obtain the property for himself?* . . .
>
> "It is, of course, possible to construe subdivision 3 of Section 14b of the bankruptcy act as amended to mean that the property must have been obtained by the bankrupt for his own use and benefit, to swell or benefit his own estate . . . but the section does not so read, and would not, in my judgment serve the purpose for which intended should we give it such a narrow and strict construction . . . *The words 'obtained property' and 'obtaining such property on credit' do not mean that the property must have been obtained for the use or benefit of the one obtaining it.*" (Italics mine.)

Cf. Fidelity & Deposit Company of Maryland v. George C. Arenz, 290 U. S. 66 (1933).

ACCORDINGLY, TO THE EXTENT THAT THE JUDGMENT INCLUDES $61,060.42 OBTAINED FROM PLAINTIFFS AS A RESULT OF DEFENDANTS' FALSE REPRESENTATIONS, FOR THE

BENEFIT OF AN ENTERPRISE IN WHICH DEFENDANTS WERE COMMONLY INTERESTED WITH PLAINTIFFS, AND WOULD HAVE REMAINED COMMONLY INTERESTED BUT FOR THEIR OWN FRAUD, PLAINTIFFS SUBMIT THAT IT IS EXCEPTED FROM THE BAR OF WILLIS ALLEN'S VOLUNTARY BANKRUPTCY.

(2) Wilful and Malicious Injury to Property of Another.

As noted above under STATEMENT OF THE CASE, the record shows that the judgment for plaintiffs includes, besides the $61,060.42 damages for fraud, a further $10,000.00 for damages to plaintiffs' property by wrongful attachment stemming from defendants' conspiracy to that end, plus $15,150.00 for loss of broadcast advertising which includes damages to plaintiffs' property by slander of their title stemming from defendants' conspiracy to that end.

The rule in construing the language of the second clause of Section 17a of the Bankruptcy Act (11 U. S. C. A., Sec. 35), with regard to willful injury to the property of another, is that proof of actual ill will of defendants is not required.

The "malice" which is required, is that which the law implies from the intentional doing of a wrongful act to the injury of another without just cause or excuse.

In re Greene, 87 F. 2d 951, 109 A. L. R. 1188 (C. C. A. Ill. 1937);

Thibodeau v. Martin, 140 Me. 179, 35 A. 2d 653 (1944).

Thus, intentional conversion of another's property is included within such injury. *Re Northrup,* 265 Fed. 420 (1920); *Bank of Williamsville v. Amherst Motor Sales,* 254 N. Y. Supp. 825 (1932); *McIntyre v. Kavanaugh,* 242 U. S. 138; *In re Stenger,* 283 Fed. 419 (1922); likewise included is one partner's fraudulent appropriation of partnership property at the expense of another, as in *Marlenee v. Warkentin,* 71 Cal. App. 2d 177, 162 P. 2d 321 (1945), and *Fooshe v. Sunshine,* 96 Cal. App. 2d 336, 215 P. 2d 66 (1950); or the intentional violation of another's title to real property by taking possession and ejecting his tenants on the pretense that a sale to the wrongdoer also covered such property, as in *Rees v. Jensen,* 170 F. 2d 348 (C. C. A. 9th, 1948); or a third party's intentional inducement of breach of contract as in *Tinker v. Colwell,* 193 U. S. 473 (1903), and *In re Minsky,* 46 Fed. Supp. 104 (D. C. N. Y. 1942).

Naturally also, liability for damages for slander or libel is not dischargeable.

In re Dowie, 202 Fed. 816 (D. C. N. Y. 1912);

McDonald v. Brown, 51 Atl. 213, 23 R. I. 546 (1902);

Parker v. Brattan, 120 Md. 428, 87 Atl. 756 (1913).

Nor is liability for malicious prosecution.

In re Stone, 278 Fed. 566 (D. C. N. Y.);

In re Snyder, 280 N. Y. Supp. 257, aff'd 280 N. Y. Supp. 259.

Obviously, slander of title which consists of the false and intentional disparagement, oral or written, of another's title to real or personal property, resulting as in the present case in pecuniary damage, is included within the willful and malicious injury to property of another that is not discharged by bankruptcy.

Likewise, the wrongful and intentional attaching of another's property for the purpose of preventing the latter's enjoyment thereof, as in the present case, comes squarely within the concept of willful and malicious injury to property.

IT IS SUBMITTED, THEREFORE, THAT INSOFAR AS THE JUDGMENT FOR PLAINTIFFS HEREIN IS BASED UPON DAMAGES IN THE SUMS OF $10,000.00 AND $15,150.00 FOR DEFENDANTS' INTENTIONAL INTERFERENCE WITH PLAINTIFFS' COMMERCIAL OPERATIONS BY WRONGFUL ATTACHMENT AND DEFAMATION OF PLAINTIFFS' TITLE TO THE RADIO STATION FLOWING FROM DEFENDANTS' CONSPIRACY TO THAT END, IT COMES SQUARELY WITHIN THE MEANING OF THE LANGUAGE OF THE SECOND HALF OF THE SECOND CLAUSE OF SECTION 17A OF THE BANKRUPTCY ACT, DENYING DISCHARGE AS TO "WILLFUL AND MALICIOUS INJURIES TO THE PERSON OR PROPERTY OF ANOTHER."

VI.

Conclusion and Request for Relief.

Appellants therefore respectfully request that this Court grant relief to appellants as follows:

(1) Setting aside those parts of the Order of the District Court below entered on October 13, 1950 [Tr. 142-143] which find that the defendant WILLIS ALLEN was released from the liability of the judgment herein by his discharge in bankruptcy, and which ordered that said defendant be excepted from the execution otherwise granted against all defendants named in said judgment;

(2) Causing said Order to be amended to include a finding that the defendant-appellee WILLIS ALLEN was not released from the liability of the judgment by his subsequent discharge in bankruptcy for the reason that said judgment is one for obtaining property by false pretenses or false representations and for willful and malicious injury to the property of another within the meaning of Section 17a of the Bankruptcy Act (11 U. S. C. A. 35);

(3) Causing said Order to be amended to include the aforesaid defendant-appellee WILLIS ALLEN within the writ of execution ordered to be issued upon the judgment herein.

Respectfully submitted,

LEONARD HORWIN,

Attorney for Appellants.